

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL PARKS CONSERVATION)	
ASSOCIATION and)	
SIERRA CLUB,)	
)	
Petitioners,)	
)	
v.)	No. 12-1425
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY and LISA P.)	
JACKSON, Administrator, United States)	
Environmental Protection Agency,)	
)	
Respondents.)	

**NONBINDING STATEMENT OF ISSUES FOR NATIONAL PARKS
CONSERVATION ASSOCIATION AND SIERRA CLUB**

In accordance with this Court’s order issued on October 26, 2012,
Petitioners National Parks Conservation Association and Sierra Club submit the
following nonbinding statement setting forth the issues they intend to raise in the
above-captioned matter:

1. Whether the Environmental Protection Agency’s final action
authorizing each of the 28 states participating in the trading programs established
under the Cross-State Air Pollution Rule (“CSAPR”) to substitute compliance with
that rule for requiring certain electric generating units to install and operate the
Best Available Retrofit Technology (“BART”) is arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law or in excess of statutory authority. 42 U.S.C. § 7607(d)(9)(A), (C); 5 U.S.C. § 706(2)(A), (C).

2. Whether the Environmental Protection Agency's decision to issue Federal Implementation Plans for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia that allow participation in the CSAPR trading programs to substitute for installation and operation of BART is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or in excess of statutory authority. 42 U.S.C. § 7607(d)(9)(A), (C); 5 U.S.C. § 706(2)(A), (C).

3. Whether the Environmental Protection Agency's decision authorizing the use of CSAPR, which at the time was subject to challenge and had been stayed and which has now been vacated, as an alternative to BART was arbitrary and capricious and exceeded the Agency's authority under the Clean Air Act and implementing regulations, which require State and Federal Implementation Plans to include enforceable emissions limitations and other control measures, 42 U.S.C. § § 7410(a)(2)(A), (C); 40 C.F.R. § 51.308(d)(3), *id.* Pt. 51, App. Y, § V. *See* 42 U.S.C. § 7607(d)(9)(A), (C); 5 U.S.C. § 706(2)(A), (C).

Dated: November 26, 2012

Respectfully submitted,

/s/ Thomas Cmar

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CERTIFICATE OF SERVICE

I, Thomas Cmar, hereby certify that I have this day served a true and correct copy of the foregoing Nonbinding Statement of Issues for National Parks Conservation Association and Sierra Club through the Court's electronic case filing system on the following:

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And by first-class mail on the following:

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Dated: November 26, 2012

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